

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000395

03/12/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

ESTEBAN J GOMEZ

v.

ADELADIO R CABECERA

ANDRE J ZENDA

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8708748

Charge: CONTRACTING WITHOUT A LICENSE

DOB: 06/20/36

DOC: 09/12/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement without oral argument since its assignment on February 13, 2003. This Court has considered and reviewed the memoranda submitted by counsel and the record from the Phoenix City Court.

The only issue presented is whether the trial court erred in ordering restitution in an amount of \$10,150.00 to Ramona Martinez, the victim of the crime. The controlling authority concerning restitution issues relating to the crime of Contracting Without a License is State v.

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Wilkinson.¹ In that case, the Arizona Supreme Court has summarized the legal requirements for a restitution order:

Section 13-603 directs the court to “require the convicted person to make restitution” to the victim, “in the full amount of economic loss as determined by the court... .” (citation omitted) Economic loss includes any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses which would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages (citation omitted). Section 13-804(B) further defines the scope of restitution by directing the court to consider “all losses caused by the criminal offense or offenses for which the Defendant has been convicted (citation omitted).”

These statutes, considered together, define those losses for which restitution should be ordered. First, the loss must be economic. Second, the loss must be one that the victim would not have incurred but for the Defendant’s criminal offense. As the Court of Appeals noted, however, ‘but for’ causation does not suffice to support restitution, for if it did, restitution would extend to consequential damages. Yet, our criminal code expressly provides the contrary (citation omitted). By eliminating consequential damages, the statutory scheme imposes a third requirement: the criminal conduct must directly cause the economic loss.²

And, the Arizona Supreme Court specifically clarified the purpose of restitution:

Porter’s (the Defendant in the Wilkinson case) criminal actions directly cause those losses (of the victim). Indeed, the original concept of restitution, and the form with the most direct link to criminal conduct, is that of forcing the criminal to yield up to his victim the fruits of the crime.³

¹ 202 Ariz. 27, 39 P.3d 1131 (2002).

² Id., 202 at 28-29, 39 P.3d at 1132-33.

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Applying Wilkinson to the facts of the instant case, it is clear that the trial judge did not err in ordering restitution. The trial judge must order restitution to the victims for all monies paid to Appellant, as these monies are the “fruit of the crime.” Appellant’s contention that restitution could not be ordered because he did not misrepresent himself as a licensed contractor as did Porter in the Wilkinson decision is without merit. Misrepresentation or not, the victim in this case is entitled to restitution as Appellant clearly violated A.R.S. Section 32-1151 by his failure to have a contractor’s license before undertaking the work he contracted to perform.

IT IS THEREFORE ORDERED affirming the order of the trial court for restitution, the judgment and sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

³ Id., 202 Ariz. at 29, 39 P.3d at 1133.